

# **Exhibit A**



Matt Adams &lt;matt@nwirp.org&gt;

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**RE: Activity in Case 2:14-cv-01641-BJR Lanuza v. Love et al Order Dismissing Plaintiffs' FTCA Malicious Prosecution Claim vs. USA (US DHS - ICE Chief Counsel)**

1 message

**Durkin, Tim M. (USAWE) <Tim.Durkin@usdoj.gov>**

Fri, Aug 16, 2019 at 1:46 PM

To: Matt Adams &lt;matt@nwirp.org&gt;

Cc: "Miller, Christopher A" &lt;Christopher.A.Miller3@ice.dhs.gov&gt;, "Fehlings, Gregory E" &lt;Gregory.E.Fehlings@ice.dhs.gov&gt;, "Verschoor, Rudy J. (USAWE)" &lt;Rudy.J.Verschoor@usdoj.gov&gt;

**Rule 11, 68 & Fed. Rule 408 Transmittal**

Dear Matt:

With the entry last week (i.e., August 6, 2019) of the Honorable Barbara J. Rothstein's Order dismissing your client Mr. Lanuza's FTCA malicious prosecution claim *with prejudice* and promptly entering a judgment in the United States' favor, I write to advise that the Defendant will now be seeking all recoverable costs – fees against Mr. Lanuza and counsel (past and present) that signed pleadings on Plaintiff's behalf after September 29, 2015 (i.e., the last day of the 21-day safe harbor provision following the United States' September 8, 2015, service of Notification of Plaintiff/Counsel's Rule 11 Violation(s)).

In the interest of trying to reach an amicable, more inexpensive and expeditious resolution of the United States' multi-thousand dollar claim against Mr. Lanuza and his counsel for all recoverable costs and fees under applicable rules – laws (i.e., Rule 11, etc., with total devoted costs / fees likely exceeding \$100,000+), I write to submit a direct settlement demand to your client and past / present counsel in the firm amount of \$25,000.

I have attached some relevant emails that I think may refresh your recollection of the United States' earlier service of its Offer of Judgment in August 2015 and my follow up service of the referenced Notice of Plaintiff's / counsel's Rule 11 Violations in September 2015. Further follow up notifications of Plaintiff's / counsel's continuing Rule 11 violations after September 29, 2015, are also generally reflected in some of the email exchanges below (btw, there are more notices / warnings than these).

I have also attached, for your convenience and easy reference, a copy of Judge Rothstein's recent Order dismissing Mr. Lanuza's case, which describes Plaintiff's / counsel's FTCA claims against the United States to be completely *without merit*. See Dkt. No. 148 – *Order Granting United States' Motion to Dismiss*. The Court also found the law in this area was *clearly established*, notwithstanding Plaintiff's counsel's argument to the contrary. *Id.*

Please be advised that in the event the United States' modest \$25,000 demand to settle its post-judgment motion for costs / fees is rejected or denied by Plaintiff or his present / past counsel, the United States' costs motion will contain a full description of Plaintiff's meritless claim history; counsel's invasive / disproportionate discovery demands; abusive conduct during depositions of innocent / uninvolved DHS Officers – ICE Counsel; and will outline meritless – misleading claims made to the District Court and on appeal, all with the intention of supporting Plaintiff's meritless malicious prosecution claim against the United States.

The United States will ask the District Court to appoint separate, completely independent counsel for Mr. Lanuza for the purpose of reviewing and representing his personal interests in the motion in light of the perceived, actual and/or potential

*conflict his current/past counsel have concerning Mr. Lanuza's accrued right to assert / seek a professional negligence – reckless legal representation claim – lawsuit against past / present counsel, specifically for but not limited to: i) Past / present counsel's failure to comply with the statute of limitations on Plaintiff's four (4) other FTCA claims, which claims were previously dismissed by the District Court for being untimely; and ii) Past / present counsel pushing Plaintiff to pursue and continuing to pursue a malicious prosecution claim which the District Court summarily rejected as lacking merit under clearly established law. See attached Order Granting Dismissal – Dkt. No. 148.*

On this latter point, it may very well be that Mr. Lanuza's newly appointed counsel may agree that you and your co-counsel's pre-dispositive motion settlement demand of \$150,000 is eminently reasonable for the purpose of resolving Mr. Lanuza's professional malpractice case - *within - the - case* claim he possesses. Mr. Lanuza's counsel may also seek additional damages for the alleged stress and anxiety you previously claimed / alleged he incurred as a result of the immigration / FTCA litigation.

Please review this \$25,000 settlement demand directly with your client Mr. Lanuza at your earliest opportunity. Please be sure to explain the consequences of his and/or your firm's rejection of this modest settlement demand, and the prospect of the Court imposing a judgment for recoverable costs and/or fees. Please also be sure to review this demand with all counsel who signed / filed pleadings in the District Court action after September 29, 2015, which includes all *past counsel*. I would have copied all present / past counsel in on this email, but thought the transmittal of the settlement demand to resolve the United States' costs / fees motion would be better coming directly from you as lead counsel. Following these consultations, please get back to me by noon (12:00 p.m.) this next Monday, August 19, 2019, with your client's and past / present counsel's response. The absence of a response by noon (PDT) Monday (which is almost 72 hours away) will be deemed a rejection of the United States' modest settlement demand.

*Thank you for your timely consideration of this matter.*

*Sincerely,*

**Tim M. Durkin**

**Asst. U.S. Attorney**

**U.S. Attorney's Office (EDWA)**

**Thomas S. Foley Federal Courthouse**

**P.O. Box 1494**

**Spokane, WA 99210-1494**

**(509) 353-2767**

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**From:** Durkin, Tim M. (USAWE)

**Sent:** Monday, April 29, 2019 4:30 PM

**To:** Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>; 'Aaron Korthuis' <[aaron@nwirp.org](mailto:aaron@nwirp.org)>; Stephanie Martinez <[stephanie@nwirp.org](mailto:stephanie@nwirp.org)>; Christopher Schenck <[chris.schenck@gmail.com](mailto:chris.schenck@gmail.com)>

**Cc:** 'Miller, Christopher A' <[Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov)>  
**Subject:** RE: Proposed Order: Lanuza v. Love No. 2:14-cv-01641-BJR

**FRE 408 Transmittal**

Counsel:

Seems like an appropriate time for your client to also take a voluntary dismissal *with prejudice* on his single remaining claim against the United States, thereby your client can avoid the risk of an award of costs/fees should a formal order of dismissal be later obtained from Judge Rothstein.

Please let me know how your client Mr. Lanuza would like to proceed by or before 12:00 noon tomorrow.

Thank you for your cooperation in this regard.

*Best regards,*

**Tim M. Durkin**

**Asst. U.S. Attorney – Civil Division**

**U.S. Attorney's Office (EDWA)**

**Thomas S. Foley Federal Courthouse**

**P.O. Box 1494**

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**From:** Aaron Korthuis <[aaron@nwirp.org](mailto:aaron@nwirp.org)>

**Sent:** Monday, April 29, 2019 4:07 PM

**To:** [bjr\\_dcdecf@dcd.uscourts.gov](mailto:bjr_dcdecf@dcd.uscourts.gov)

**Cc:** [jonathanlove786@gmail.com](mailto:jonathanlove786@gmail.com); Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>; Stephanie Martinez <[Stephanie@nwirp.org](mailto:Stephanie@nwirp.org)>; Christopher Schenck <[chris.schenck@gmail.com](mailto:chris.schenck@gmail.com)>; Durkin, Tim M. (USAWEA) <[TDurkin@usa.doj.gov](mailto:TDurkin@usa.doj.gov)>

**Subject:** Proposed Order: Lanuza v. Love No. 2:14-cv-01641-BJR

Good afternoon,

Please find attached the Word version of the Proposed Order on Plaintiff and Defendant's Love's Stipulated Motion to Dismiss Pursuant to Private Settlement Agreement.

Aaron

--  
**Aaron Korthuis (he/his/él)**  
Impact Litigation/Yale Law Journal Fellow  
**NORTHWEST IMMIGRANT RIGHTS PROJECT**  
615 Second Avenue, Suite 400, Seattle, WA 98104  
p: 206.816.3872 | f: 206.587.4025 | e: [aaron@nwirp.org](mailto:aaron@nwirp.org)

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**From:** Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>  
**Sent:** Tuesday, October 23, 2018 12:17 PM  
**To:** Durkin, Tim M. (USAWE) <[TDurkin@usa.doj.gov](mailto:TDurkin@usa.doj.gov)>  
**Cc:** Miller, Christopher A <[Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov)>; Curtis, Kendall (USAWE) <[KCurtis1@usa.doj.gov](mailto:KCurtis1@usa.doj.gov)>; Glenda Aldana Madrid <[glenda@nwirp.org](mailto:glenda@nwirp.org)>  
**Subject:** Re: Activity in Case 2:14-cv-01641-BJR Lanuza v. Love et al Minute Order

Hi Tim,

Pursuant to Rule 408, please consider this a formal settlement offer to resolve all claims. In response to our discussion yesterday I have talked with my client with respect to a specific amount that would be required to settle his claims against the USA in this case. Mr. Lanuza is prepared to settle the case for the sum total of \$150,000.

If you need any additional information please do not hesitate to contact me.

Matt

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**From:** Durkin, Tim M. (USAWE)  
**Sent:** Monday, October 22, 2018 12:58 PM  
**To:** Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>  
**Cc:** Miller, Christopher A <[Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov)>; Curtis, Kendall (USAWE) <[KCurtis1@usa.doj.gov](mailto:KCurtis1@usa.doj.gov)>  
**Subject:** RE: Activity in Case 2:14-cv-01641-BJR Lanuza v. Love et al Minute Order

Matt:

Please find attached my email to you of August 14, 2015, with proposed Rule 68 and Rule 408 Offer of Judgment of \$4,000. As I recall, Plaintiff rejected this offer.

Look forward to our conference call at 1:00 p.m. Thanks.

Best,

**Tim M. Durkin**

**Asst. U.S. Attorney – Civil Division**

**U.S. Attorney's Office (EDWA)**

**Thomas S. Foley Federal Courthouse**

**P.O. Box 1494**

**Spokane, WA 99210-1494**

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**From:** Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>

**Sent:** Friday, October 19, 2018 4:14 PM

**To:** Durkin, Tim M. (USAWE) <[TDurkin@usa.doj.gov](mailto:TDurkin@usa.doj.gov)>

**Cc:** Miller, Christopher A <[Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov)>; Curtis, Kendall (USAWE) <[KCurtis1@usa.doj.gov](mailto:KCurtis1@usa.doj.gov)>; Christopher Schenck <[chris.schenck@gmail.com](mailto:chris.schenck@gmail.com)>; Glenda Aldana Madrid <[glenda@nwirp.org](mailto:glenda@nwirp.org)>

**Subject:** Re: Activity in Case 2:14-cv-01641-BJR Lanuza v. Love et al Minute Order

Hi Tim,

I believe it will come as no surprise that we disagree with your assessment of the case. But to be clear, Plaintiff is not prepared to dismiss the FTCA claim. However, if USA is willing to provide a monetary offer to our client we are willing to convey that to our client. Thank you for advising that the Illinois address is no longer valid. Do you have updated contact information for Mr. Love? If not, I am hoping Amanda can provide us more insight as to whether Mr. Love will be represented or proceeding pro se below, and also as to his current contact information.

The time you proposed for our call, Monday at 1pm will work well. We can call in to this number:

206 957 8655

98104#

Matt

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On Fri, Oct 19, 2018 at 3:08 PM, Durkin, Tim M. (USAWEA) <[Tim.Durkin@usdoj.gov](mailto:Tim.Durkin@usdoj.gov)> wrote:

Matt:

Attached is a proposed stipulated order dismissing the United States, with both parties bearing their own costs / fees (at this point). See also previous email from May 10, 2016.

As reflected in Mr. Love's plea agreement, his entry of a guilty plea, and sentencing before Magistrate Judge Brian A. Tsuchida, Mr. Love is the only employee that was involved in the alteration of the subject I-826 form, and he is an attorney, not federal law enforcement. Therefore, there remains no factual / legal basis for Mr. Lanuza and his attorneys to continue to pursue a FTCA claim for malicious prosecution against the United States.

By the way, in reviewing the docket sheet, I'm not convinced Ms. Lee has entered a notice of appearance in the U.S. District Court proceeding and Mr. Brennan has withdrawn. Therefore, I believe Mr. Love is proceeding *pro se* and I'm not convinced he's been formally served with the notice of remand to the District Court or the setting of this status report (I also believe the Illinois address is no longer valid).

I am available at 1:00 p.m. Monday for a quick conference call so that we may discuss the entry of the order of dismissal. If you have a draft Status Report you would like me to consider, please forward for my review / comment at your earliest opportunity. Thank you for your cooperation in this regard.

Best regards,

Tim M. Durkin

**Asst. U.S. Attorney – Civil Division**

**U.S. Attorney's Office (EDWA)**

**Thomas S. Foley Federal Courthouse**

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**From:** Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>

**Sent:** Friday, October 19, 2018 10:26 AM

**To:** Durkin, Tim M. (USAWEA) <[TDurkin@usa.doj.gov](mailto:TDurkin@usa.doj.gov)>; Amanda Lee <[amanda@amandaleelaw.com](mailto:amanda@amandaleelaw.com)>

**Subject:** Fwd: Activity in Case 2:14-cv-01641-BJR Lanuza v. Love et al Minute Order

Hi Tim and Amanda,

I am reaching out as pursuant to the Court's order the parties must file an updated joint status report by next Monday. Can we set up a time to talk either today at 4:30, or early Monday so that we can make the necessary arrangements?

Mat

----- Forwarded message -----

From: <[ECF@wawd.uscourts.gov](mailto:ECF@wawd.uscourts.gov)>

Date: Wed, Oct 10, 2018 at 9:42 AM

Subject: Activity in Case 2:14-cv-01641-BJR Lanuza v. Love et al Minute Order

To: [ECF@wawd.uscourts.gov](mailto:ECF@wawd.uscourts.gov)

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**U.S. District Court**

**United States District Court for the Western District of Washington**

**Notice of Electronic Filing**

The following transaction was entered on 10/10/2018 at 9:42 AM PDT and filed on 10/10/2018

**Case Name:** Lanuza v. Love et al

**Case Number:** [2:14-cv-01641-BJR](#)

**Filer:**

**Document Number:** 116(No document attached)

**Docket Text:**

**MINUTE ORDER: The parties are ordered to file an updated Joint Status Report no later than 10/22/2018.  
Authorized by Judge Barbara J. Rothstein. (RM)**

**2:14-cv-01641-BJR Notice has been electronically mailed to:**

Matt Adams [matt@nwirp.org](mailto:matt@nwirp.org), [sydney@nwirp.org](mailto:sydney@nwirp.org)

Christopher Schenck [chris.schenck@gmail.com](mailto:chris.schenck@gmail.com)

Timothy M. Durkin [USAWAE.TDurkinECF@usdoj.gov](mailto:USAWAE.TDurkinECF@usdoj.gov), [CaseView.ECF@usdoj.gov](mailto:CaseView.ECF@usdoj.gov), [Tim.Durkin@usdoj.gov](mailto:Tim.Durkin@usdoj.gov), [kendall.curtis@usdoj.gov](mailto:kendall.curtis@usdoj.gov), [mary.f.buhl@usdoj.gov](mailto:mary.f.buhl@usdoj.gov)

Glenda Melinda Aldana Madrid [glenda@nwirp.org](mailto:glenda@nwirp.org), [glenda.aldana@gmail.com](mailto:glenda.aldana@gmail.com)

Stephanie M Martinez [stephanie@stephaniemartinez.com](mailto:stephanie@stephaniemartinez.com), [stephmar19@gmail.com](mailto:stephmar19@gmail.com)

**2:14-cv-01641-BJR Notice will not be electronically mailed to:**

Jonathan M. Love(Terminated)  
**450 DAVIS STREET**  
EVANSTON, IL 60201

Northwest Immigrant Rights Project  
615 Second Ave., Ste. 400  
Seattle, WA 98104  
(206) 957-8611  
(206) 587-4025 fax

----- Forwarded message -----

From: "Durkin, Tim M. (USAWE)" <[TDurkin@usa.doj.gov](mailto:TDurkin@usa.doj.gov)>  
To: Matt Adams <[matt@nwirp.org](mailto:matt@nwirp.org)>, Glenda Aldana Madrid <[glenda@nwirp.org](mailto:glenda@nwirp.org)>  
Cc: "Miller, Christopher A (Christopher.A.Miller3@ice.dhs.gov)" <[Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov)>, "Roberson, Therese L. (USAWE)" <[TRoberson@usa.doj.gov](mailto:TRoberson@usa.doj.gov)>  
Bcc:  
Date: Thu, 21 Apr 2016 22:06:36 +0000  
Subject: RE: Lanuza v. U.S. - draft stipulated motion to continue stay

**Matt and Glenda:**

Attached is a Stipulated Order of Dismissal, providing for A dismissal without any award of costs or fees.

As you know, Mr. Love has now admitted and accepted sole responsibility for the altered I-826 form that he used in the United States' removal proceedings against Mr. Lanuza. Therefore, there is no basis for asserting a cause of action against the United States under the Federal Tort Claims Act. 18 U.S.C. §2680(h); cf., Rule 11.

I'm advised that the law firm Kilpatrick and Townsend is no longer involved in the case and will be filing notices of withdrawal for all current and formerly employed counsel.

Pursuant to the Court's last Order we need to either enter the agreed upon Stipulated Order today or file a Jt. Status Report. If we agree to the proposed Dismissal, I will call and advise Judge Pechman's chambers that an Order of Dismissal is forthcoming. If more litigation is necessary, the United State will seek all recoverable costs.

Please kindly confer with your client and get back to me at your earliest convenience. Otherwise, we need file a Jt. Status Report today.

Thank you for your consideration in this regard.

Sincerely,

**Tim M. Durkin**

**Assistant United States Attorney**

**P.O. Box 1494**

**Spokane, WA 99210-1494**

**(509) 353-2767**

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**From:** Durkin, Tim M. (USAWE)

**Sent:** Monday, January 25, 2016 2:59 PM

**To:** 'Matt Adams'

**Cc:** Miller, Christopher A (Christopher.A.Miller3@ice.dhs.gov); Martinez, Stephanie; Chris Schenck; Glenda Aldana Madrid

**Subject:** RE: Lanuza v. Love and U.S. - draft stipulated motion to continue stay

Matt & Stephanie:

Attached is a draft Stipulated Motion for Continuing Stay. It's modeled off of the last one that Stephanie crafted.

Please review and if acceptable, please file at your earliest convenience. I'll forward the draft Order here in few minutes.

Thank you for your assistance in this regard.

**Tim M. Durkin**

**Assistant United States Attorney****P.O. Box 1494****Spokane, WA 99210-1494****(509) 353-2767**

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**From:** Matt Adams [mailto:[matt@nwirp.org](mailto:matt@nwirp.org)]**Sent:** Monday, January 25, 2016 10:12 AM**To:** Durkin, Tim M. (USAWEA)**Cc:** Miller, Christopher A ([Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov)); Martinez, Stephanie; Chris Schenck; Glenda Aldana Madrid**Subject:** Re: Lanuza v. Love and U.S. - draft stipulated motion to continue stay

Hi Tim,

Apologies, I thought I had responded and now realized that the response was left as a draft. In light of the 11(c)(1) plea, we are willing to sign on to a stipulated requesting extension until 4/21.

Matt

On Mon, Jan 25, 2016 at 10:05 AM, Durkin, Tim M. (USAWEA) <[Tim.Durkin@usdoj.gov](mailto:Tim.Durkin@usdoj.gov)> wrote:

Matt:

Just checking in to see where we are on the joint status report that is due today.

Please get back to me at your earliest convenience. Thank you.

***Tim M. Durkin*****Assistant United States Attorney****P.O. Box 1494****Spokane, WA 99210-1494****(509) 353-2767**

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**From:** Matt Adams [mailto:[matt@nwirp.org](mailto:matt@nwirp.org)]**Sent:** Friday, January 22, 2016 9:16 AM**To:** Durkin, Tim M. (USAWEA)**Cc:** Martinez, Stephanie; Chris Schenck; Glenda Aldana Madrid; Miller, Christopher A ([Christopher.A.Miller3@ice.dhs.gov](mailto:Christopher.A.Miller3@ice.dhs.gov))**Subject:** Re: Lanuza v. Love and U.S. - draft stipulated motion to continue stay

Hi Tim, we will follow up shortly.

Matt

On Thu, Jan 21, 2016 at 4:03 PM, Durkin, Tim M. (USAWEA) <[Tim.Durkin@usdoj.gov](mailto:Tim.Durkin@usdoj.gov)> wrote:

Matt:

Just doing a little follow up on this matter. As you know, Mr. Love entered into a conditional Fed.R.Crim.Pro. 11(c)(1)(C) plea agreement on January 15<sup>th</sup>. Final formal acceptance of the parties' conditional guilty plea and the negotiated plea agreement, and joint recommendation on sentencing, will not occur (if accepted) until the sentencing hearing, which is scheduled for April 20, 2016. Thus, Matt Diggs and Andrew Friedman, the Criminal AUSAs in the WDMA who are involved in supervising the criminal investigation and now prosecuting the filed criminal charges, have advised that their criminal investigation and case remains open, active and pending until such time as the District Court Judge formally accepts the parties' Plea Agreement and imposes the jointly recommended sentence.

Further, since the plea agreement is conditional and remains pending until sentencing, Mr. Love still retains his 5<sup>th</sup> Amendment rights on the charged and uncharged conduct. Still further, members of the Federal Judge's U.S. Probation and Pretrial Services branch will also begin performing their investigation re: Mr. Love's background and will also be providing recommendations – comments back to the Federal District Court Judge for plea acceptance and sentencing purposes.

Given this backdrop, Matt Diggs reached out to me and requested that the civil case discovery continue to be stayed until after the April 20<sup>th</sup> sentencing, at which time he is hopeful/optimistic that the Court will formally accept the plea agreement and will impose the jointly recommended sentence and the other agreed upon terms and conditions of sentencing.

Although I'm not elated with another short stay, I think it's worthwhile given the criminal interests and separate but related civil interests that are at stake. Therefore, my suggestion is to submit another short Jt. Status Report next Monday with a request to continue the stay until April 21<sup>st</sup>.

Please review at your earliest convenience and let me know how you want to proceed. Thanks.

**Tim M. Durkin**

**Assistant United States Attorney**

**P.O. Box 1494**

**Spokane, WA 99210-1494**

**(509) 353-2767**

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**From:** Matt Adams [mailto:[matt@nwirp.org](mailto:matt@nwirp.org)]

**Sent:** Tuesday, December 01, 2015 10:20 AM

**To:** Durkin, Tim M. (USAWE)

**Cc:** Martinez, Stephanie; Chris Schenck; Glenda Aldana Madrid

**Subject:** draft stipulated motion to continue stay

Hi Tim,

Here is a draft of the joint status report and stipulated motion to continue to stay the case. Shoot us any proposed edits or if this is good on your end we can go ahead and file.

Matt

--

Northwest Immigrant Rights Project  
615 Second Ave., Ste. 400  
Seattle, WA 98104  
(206) 957-8611  
(206) 587-4025 fax

----- Forwarded message -----

From: "Durkin, Tim M. (USAWE)" <TDurkin@usa.doj.gov>  
To: "Matt Adams (matt@nwirp.org)" <matt@nwirp.org>, Glenda Aldana Madrid <glenda@nwirp.org>  
Cc: "Martinez, Stephanie (SMartinez@kilpatricktownsend.com)" <SMartinez@kilpatricktownsend.com>, "Machleidt, Dario" <dmachleidt@kilpatricktownsend.com>, Chris Schenck <CSchenck@kilpatricktownsend.com>, "Miller, Christopher A (Christopher.A.Miller3@ice.dhs.gov)" <Christopher.A.Miller3@ice.dhs.gov>  
Bcc:  
Date: Wed, 9 Sep 2015 05:08:15 +0000  
Subject: Lanuza - FRE 408 Transmittal & Notice of 21 Day Service of Rule 11 Motion-Memo  
Rule 11 Notification & FRE 408 Transmittal

Dear Counsel:

Pursuant to Rules 408 and 11, please consider this formal notification of counsel's and their client's safe harbor obligations under the Rule, and notice of Defendant's demand that you take an immediate voluntary (or stipulated) dismissal of your client's factually and legally unsupportable Complaint and his sole surviving claim of malicious prosecution, which is disfavored at law and completely meritless here. See Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998) ("The purpose of the safe harbor ... is to give the offending party the opportunity, within 21 days after service of the motion for sanctions, to withdraw the offending pleading and thereby escape sanctions.") (emphasis in original); see also attached Motion - Memo For Rule 11 Sanctions.

While this transmittal should be considered formal notification to all counsel of their 21 day safe harbor obligation, at the present time the United States is notifying you of its intention, should a prompt dismissal not occur (i.e., in no later than 21 days) to seek sanctions against Mr. Adams and Ms. Aldana-Madrid, the primary Rule 11 violators in this case due to their lead involvement in initiating Plaintiff's specious claim against the United States and in now continuing the prosecution of Plaintiff's frivolous, futile, and meritless claim. See attached Memo. However, please be advised that in the event there are any further court filings - discovery submittals signed by counsel other than Mr. Adams and Ms. Aldana-Madrid in the continued pursuit of this matter, and dismissal does not occur within 21 days of this notification, the United States reserves the right to seek (upon the Court's dismissal of Plaintiff's unsupportable claim) sanctions against the Plaintiff and all counsel who have signed or filed a pleading and/or a discovery mechanism in further violation of Rule 11 with the continued pursuit of Plaintiff's now clearly determined meritless FTCA malicious prosecution claim.

If Plaintiff's dismissal occurs with 21 days, the United States will not pursue a Rule 11 motion against counsel or the Plaintiff, and will also forego seeking the recovery of allowable costs against Mr. Lanuza. Obviously, this transmittal, notice and its contents will not be conveyed to the trier of fact until after Plaintiff's case is dismissed. See Rule 11 and FRE 408.

A short extension to provide or allow for Plaintiff's dismissal to occur following Mr. Love's deposition on September 30th may be requested. However, a signed stipulation will need to be negotiated (with no further violations of Rule 11).

Please contact me should you have any questions.

Sincerely,

Tim M. Durkin

Assistant United States Attorney

P.O. Box 1494

Spokane, WA 99210-1494

(509) 353-2767

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Cc: "Miller, Christopher A (Christopher.A.Miller3@ice.dhs.gov)" <Christopher.A.Miller3@ice.dhs.gov>, "Sanchez, Raphael (Raphael.Sanchez@ice.dhs.gov)" <Raphael.Sanchez@ice.dhs.gov>, "Fehlings, Gregory E" <Gregory.E.Fehlings@ice.dhs.gov>, "Thomas Brennan (TMB@McKay-Chadwell.com)" <TMB@mckay-chadwell.com>, "djj@mckay-chadwell.com" <djj@mckay-chadwell.com>  
Bcc:  
Date: Fri, 14 Aug 2015 19:46:43 +0000  
Subject: Lanuza v. United States - Offer of Judgment - Time Sensitive

**Rule 68 & FRE 408 Submittal**

Dear Counsel:

In anticipation of forthcoming litigation costs, the United States serves you with its Officer of Judgment.

Please communicate this offer and its operative effects to your client at your earliest convenience.

*Regards,*

**Tim M. Durkin**

**Assistant United States Attorney**

**P.O. Box 1494**

**Spokane, WA 99210-1494**

**(509) 353-2767**

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**6 attachments**

-  **Memo & Motion for Rule 11 Sanctions (TD draft)-090815.pdf**  
75K
-  **Lanuza - FRE 408 Transmittal & Notice of 21 Day Service of Rule 11 Motion-Memo.eml**  
108K
-  **Offer of Judgment-081415.pdf**  
16K
-  **Lanuza v. United States - Offer of Judgment - Time Sensitive.eml**  
31K
-  **148 - Order Granting US Mot to Dismiss (Lanuza v)-081619.pdf**  
710K
-  **149 - Jgmt in Civil Case (Lanuza v USA (WDWA))-080619.pdf**  
100K